

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Case No. C-1-02-479

JEFFERSON-PILOT LIFE INSURANCE CO., )  
Plaintiff )  
v. )  
CHRISTOPHER L. KEARNEY, )  
Defendant )

DEPOSITION OF: ROBERT MILLS, taken before  
Sharon R. Roy, Notary Public Stenographer, pursuant  
to Rule 30 of the Massachusetts Rules of Civil  
Procedure, at the law offices of ACCURATE COURT  
REPORTING, 1500 Main Street, Springfield,  
Massachusetts on May 14, 2004 commencing at 8:38 p.m.

A P P E A R A N C E S:

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Sharon R. Roy  
Certified Shorthand Reporter  
Registered Professional Reporter

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A P P E A R A N C E S:

FOR THE PLAINTIFF:

WOOD & LAMPING LLP  
600 Vine Street, Suite 2500  
Cincinnati, OH 45202-2491  
513-952-6000  
BY: WILLIAM R. ELLIS, ESQ.

FOR THE DEFENDANT:

GRAYDON HEAD & RITCHEY LLP  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, OH 45201  
513-621-6464  
BY: MICHAEL A. ROBERTS, ESQ.

Also Present:

Adam E. Formus  
Joanne Yacavone, Videographer

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I N D E X

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THE VIDEOGRAPHER: The caption of  
the case is Jefferson-Pilot Life Insurance  
Company, plaintiff, versus Christopher L.  
Kearney, case number C-1-02-479. Would the  
court reporter please swear in the witness.

ROBERT MILLS, Deponent, having  
first been duly sworn, deposes and states as  
follows:

MR. ROBERTS: This is Mike Roberts,  
counsel for the defendant, and we are here on  
Friday morning, May 14, 2004 at 8:40. This  
deposition was to begin at 8:30 in the  
morning. Since 8:30 two procedural issues  
have arisen in the case.

First, to describe the scene, we're  
in the court reporter's office conference  
room in Springfield, Massachusetts. At the  
table is the videographer, court reporter,  
Mr. Ellis, counsel for the plaintiff, the  
witness, and myself. In the corner of the  
room is a lawyer named Adam Formus who is  
in-house counsel for DMS. Yesterday during

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1 the course of two depositions Mr. Formus sat  
2 away from the table in the corner of the room  
3 taking down on his laptop every word that was  
4 said in the room. That's not a problem. The  
5 problem is he was connected to the Internet  
6 and connected to his office during  
7 yesterday's proceedings.

8 I took one long deposition  
9 yesterday of Mr. Ditmar, and at the second  
10 deposition I asked the witness if he had any  
11 communications regarding the conduct of the  
12 proceeding. It was my understanding from the  
13 testimony that Mr. Formus's Internet  
14 connection back to the office and his  
15 word-for-word transcription of the day's  
16 proceedings were communicated to Mr. Bonsall.  
17 For that reason this morning when I arrived I  
18 requested that Mr. Formus, if he desired to  
19 take down every word that is spoken today in  
20 addition to the court reporter doing so, he  
21 could do so on his laptop and save that  
22 information to his laptop either on a disc or  
23 not to a disc, he could save it to the hard  
24 drive on the laptop. That was unacceptable

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1 to Mr. Formus. He said, "No, I'm not going  
2 to do it. I'm going to be connected to the  
3 Internet." So there is reason to suspect  
4 that these proceedings are being transmitted  
5 back to DMS's office contemporaneous with the  
6 proceedings. I have to take still two more  
7 depositions this afternoon and I've asked  
8 Mr. Formus for his courtesy in not being  
9 connected to the Internet, not being  
10 connected to his network back at the office  
11 and he refuses.

12 The second procedural issues that  
13 arose, is for approximately 15 months the  
14 defendant has been seeking the privilege log  
15 be provided. The privilege log due in the  
16 case from the plaintiff was due approximately  
17 15 months ago and there has been more than a  
18 dozen requests for the privilege log. We are  
19 now beyond the discovery cut-off. I am here  
20 on my last day of depositions of DMS  
21 employees. I've taken the depositions I  
22 intend to take of the Jefferson-Pilot  
23 employees. I've told Mr. Ellis that I need  
24 the privilege log before the conclusion of

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1 the depositions. Mr. Ellis handed to me at  
2 8:30 this morning or 8:32 a fax that purports  
3 to be from a woman named Christie Zerges,  
4 from the law firm of Wood & Lamping, who I  
5 understand to be Mr. Ellis's paralegal. The  
6 fax was transmitted, according to the fax  
7 transmittal line, at 4:18 May 13, 2004, and  
8 the fax is specifically directed to the  
9 Springfield Marriott, Guest Michael Roberts.  
10 I stayed at the Springfield Marriott  
11 yesterday. The total number of pages is six.  
12 And the note written by Christie Zerges is,  
13 "Mike, attached, please find the privilege  
14 log which was completed today in the above  
15 case."

16 Apparently, Mr. Ellis intercepted  
17 this fax before I could receive it at the  
18 Marriott yesterday and I was not provided it  
19 prior to the conduct of this deposition.  
20 Perhaps that was because he didn't desire me  
21 to be able to review it before the  
22 deposition.

23 Nonetheless, the third procedural  
24 issue, actually, is that the privilege log

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1 itself is woefully insufficient. The rules  
2 specifically require that the privilege log  
3 contain the dates of the communication, the  
4 author of the communication by name, the  
5 recipient, and the substance of the  
6 communication. The purpose for that is  
7 obvious. It's for the Court to be able or  
8 the lawyer to be able to determine whether in  
9 fact there is an appropriate designation of  
10 privilege.

11 Notwithstanding those very  
12 unambiguous obligations, Mr. Ellis's office  
13 has prepared a list of the 86 pages, I knew  
14 what 86 pages they were, I knew what the  
15 Bates numbers were, and all he has done is  
16 recited the Bates number of those pages and  
17 said "privileged communication." Some said  
18 "privileged communication from counsel to  
19 client," some said "privileged communication  
20 between counsel." Otherwise there is no data  
21 provided in the alleged privilege log that  
22 complies with the rule or offers the opposing  
23 party the opportunity to explore whether or  
24 not it's an appropriate exercise or assertion

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Q. I think you and I agree. I mean, those two things that I just articulated are very important. What I'm asking you, is there anything else, is there a third thing, a fourth thing that is equally important or more important than those two?

A. Each claim is unique, so depending on the circumstances of the case, I can't say which information is more important than the other. It is essentially going to be a culmination of gathering a lot of the information to be able to make any type of decision.

Q. In your 13 years of experience in this field have you ever run into a case where the policy rights and obligations and the facts and circumstances of the individual's medical condition are less important than something else?

A. Well, again, it's hard to -- you can't really make those determinations on those two things alone. There's other elements, information that's gathered in the case that helps establish the claim, the benefit eligibility, the significance of the medical. You can't make decisions on those two things alone.

Q. Sir, that wasn't my question. My question

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A. There were no directors at that time. It was a block of business that we just received. I was one of the directors that were placed on the files as the cases came in.

Q. How many people report to you now?

A. I recently had someone leave, so I have three people that report to me now.

Q. Do you work out of the Springfield office?

A. Yes, I do work out of the Springfield office.

Q. Do you meet with your subordinates and develop strategies on claims they're handling?

A. My subordinates come into my office and we discuss cases and strategies for the case.

Q. And is that something that you did when you reported to supervisors when you were a claim consultant?

A. I would from time to time discuss cases with my superiors. I had a lot of ability to work on my own because of my experience as well.

Q. Would you consult with Mr. Hughes to develop strategies on cases from time to time?

A. Yes, I would consult with Mr. Hughes.

Q. And would you consult with Mr. Ditmar when

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was can you identify for me one instance in your 13 years of experience where the rights and obligations under the policy and the facts and circumstances of the person's medical condition weren't as important in determining benefit eligibility as something else? Can you identify one case for me?

A. You know, like I said, I've handled a lot of cases over my years. I can't really point to any specific case to try to say that there's not other things that are just as important in combining all those factors in making a decision.

Q. Why did you move from the -- why did you move to the Equitable block of business?

A. Why did I move to the Equitable block of business? I don't think it was a choice. I think it was explained that I would be moving to Equitable and handling cases in that block of business.

Q. Were you promoted?

A. Yes, I was.

Q. What was your promotion from and to?

A. I was promoted from a claim consultant to a director of claims for the Equitable block.

Q. Who had been the director of claims for the Equitable block?

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you reported to him, to develop strategies on cases from time to time?

A. I recall meeting with him as well to discuss cases.

Q. Would those strategy discussions incorporate developing information directed at ultimately resolving a claim?

A. Those meetings were about discussing the cases as far as what information was needed to process the claim. If we were going to do medical examinations in circumstances where there was a disputed claim, there would have been a discussion about whether or not trying to resolve the situation would have made sense.

Q. Did you make a trip to Miami, Florida to meet an attorney named Spiegel in the fall of 2001?

A. Yes, I do recall meeting with an attorney John Spiegel. It most likely was the fall because I remember it was shortly after 9/11. I was a little apprehensive about getting on an airplane.

Q. Did you prepare a field report following that visit?

A. I don't recall if there was a field report created.

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1 words, but I know we talked about some of the  
2 difficulties in the case and the differences both,  
3 you know, the company had as well as the differences  
4 of opinions that Mr. Kearney had. I recall Bill --

Q. Bill Hughes?

A. Bill Hughes starting the meeting by  
apologizing that he needed to tell him that we had  
recently, just in a matter of minutes, uncovered an  
error in the payment of benefits.

Bill Hughes discussed with him settlement  
options. I remember at one point Attorney Spiegel  
asked us to leave and have lunch, that he needed to  
speak with Mr. Kearney.

I recall returning from lunch waiting in  
Attorney Spiegel's waiting room for a while for him  
to come out of his office. I recall him coming out,  
because he had not talked with Mr. Kearney for a  
while. I recall him talking to us about University  
of Miami, University of Miami football. I recall him  
getting the phone call from Mr. Kearney. He walked  
back into his office and talked with him, I presume.  
At some point he came back out of the office and told  
us that our meeting was essentially over and we could  
get back on our plane and go home.

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1 saying the error in the payments, the alleged error  
2 in the payments to Mr. Kearney was uncovered by  
3 somebody minutes before the meeting with Spiegel?

A. Yeah, several minutes before the meeting  
with Attorney Spiegel, Bill Hughes and I were in a  
Cuban coffee shop, I believe, and I uncovered the  
mistake, the Jefferson-Pilot mistake in paying the  
increase in benefits.

Q. Was it a Jefferson-Pilot mistake or was it  
a Jefferson-Pilot mistake and a DMS mistake?

A. It was a Jefferson-Pilot mistake that, you  
know, I unfortunately continued for quite some time.

Q. You got control of the file in January of  
2000, and this meeting with Spiegel occurred in  
October 2001?

A. I got the file around January 2000, and I  
believe you're correct, because it was, again, it was  
shortly after 9/11.

Q. And Mr. Hughes was going on the trip  
because he had working knowledge of the file prior to  
the Cuban coffee revelation, right?

A. He had knowledge of the file, and I believe  
the file would also reflect that he had some  
communications with Mr. Kearney.

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Q. So there wasn't any substantive dialogue  
after the lunch hour, you were just waiting and then  
finally you were told to go home?

A. I remember there was a lot of waiting, we  
waited a while.

Q. Was there any substantive dialogue after  
the lunch hour?

A. I mean, what do you mean by substantive  
dialogue?

Q. You told me you talked about the University  
of Miami football team, and we can go into that a  
little later, but did you discuss Mr. Kearney's claim  
with Mr. Spiegel after the lunch hour?

A. I don't recall specifically if we talked  
any further details at that point in time. The best  
I can recall, it was a general conversation.

Q. How long was the morning meeting?

A. I don't remember the exact time frames of  
the meeting. Going to Florida, we probably would  
have had an early morning flight. I believe we met  
sometime early morning, 9, 9:30 maybe, then we broke  
for lunch at some point.

Q. You said recently, in a matter of minutes,  
we uncovered an error in the payments. Are you

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Q. And Mr. Ditmar worked on Mr. Kearney's file  
in the late '90's, right?

A. I know I handled it from January of 2004.  
I don't know the extent of what Mr. Ditmar -- I'm  
sure you spoke with him about that yesterday.

Q. You're not mindful from your knowledge of  
the claim file that he had involvement in the claim  
file in the '97 and '98 time frame, at least?

A. I'm sure that the file reflects that.

Q. Is he good at his job?

A. I would imagine that he's good at his job.

Q. Does he have difficulty understanding  
disability insurance policies, as far as you know?

A. I don't necessarily know the man and all  
his capacities, but he seems to be a pretty  
knowledgeable guy.

Q. He was your supervisor for disability  
claims for several months or years, right?

A. He was my supervisor, I don't know, I can't  
recall how long that was.

Q. And is Mr. Hughes a knowledgeable fellow?

A. I would view Mr. Hughes as a knowledgeable  
fellow.

Q. With regard to disability claims and

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1 Q. Were you given a spot bonus after the Cuban  
2 coffee revelation?

3 A. I think my testimony earlier was that I  
4 don't recall ever receiving a spot bonus.

5 Q. Have you told me everything you can recall  
6 about communications you had with Jefferson-Pilot  
7 persons regarding Mr. Kearney's claim?

8 A. To the best of my knowledge as I sit here  
9 today, I've answered your questions accurately and as  
10 much as I can recall.

11 Q. Okay. I just want to confirm. There's  
12 nothing you can remember sitting here today about  
13 anything you communicated with a Jefferson-Pilot  
14 person regarding Mr. Kearney's claim?

15 MR. ELLIS: Objection. Asked and  
16 answered several times.

17 MR. ROBERTS: Okay.

18 A. Other than what we've already discussed?

19 Q. That's my question. Have we discussed  
20 everything that you can think of?

21 A. To my knowledge, yes, we have.

22 Q. Did you and Mr. Hughes jointly arrive at  
23 the settlement proposal that you communicated to  
24 Mr. Spiegel at the meeting in Miami?

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1 extraordinary Cuban coffee revelation interpretation  
2 of the policy?

3 MR. ELLIS: Objection to form.

4 A. Can you repeat the question again, please?

5 Q. You said that numbers were discussed with  
6 Mr. Spiegel. Were those numbers without regard for  
7 the Cuban coffee revelation?

8 A. My recollection was that numbers that were  
9 discussed with Attorney John Spiegel were based on or  
10 without the prior understanding of the change of what  
11 the benefit would be at that point in time.

12 Q. I don't understand what you said. What  
13 were you trying to say?

14 A. That the numbers that were discussed were  
15 based on the previous understanding of what Mr.  
16 Kearney's benefit was prior to the discovery in the  
17 coffee shop.

18 Q. Okay, so the numbers that you and  
19 Mr. Hughes, or maybe just Mr. Hughes, were suggesting  
20 to Mr. Spiegel as the measurement of how this claim  
21 could be resolved, those numbers were presented  
22 without any consideration given to the new  
23 interpretation of the policy?

24 MR. ELLIS: Objection to form.

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1 MR. ELLIS: I'm going to object. I

2 think that assumes facts not in evidence.

3 A. My recollection is that Mr. Hughes had a  
4 conversation with Mr. Spiegel about considering or  
5 discussing a settlement. I don't think it was  
6 necessarily an offer.

7 Q. There was no settlement offer proposed at  
8 that meeting, as far as you're aware?

9 A. To my recollection, numbers were discussed  
10 and discussions were held at how numbers were  
11 arrived. The circumstances or the revelation that we  
12 talked about that happened in the coffee house added  
13 another element of that discussion, but I don't think  
14 an actual number was extended to Attorney Spiegel at  
15 that point in time. Mr. Hughes would have more  
16 knowledge on that than I would.

17 Q. Well, you were there, weren't you?

18 A. Yeah.

19 Q. Mr. Hughes didn't have any private  
20 discussions with Mr. Spiegel during that day that you  
21 weren't participating in or present at, right?

22 A. Correct.

23 Q. And you said there was -- you said numbers  
24 were discussed. Those were without regard for the

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1 A. Can you repeat the question so I can  
2 understand it.

3 Q. Do you not understand it?

4 A. No, I did not.

5 Q. Was the number -- was Mr. Hughes the only  
6 one that communicated a number to Spiegel as opposed  
7 to you?

8 A. Yeah, he was the superior, so he  
9 communicated.

10 Q. Do you know how it was that Mr. Hughes  
11 arrived at determining the appropriateness of  
12 articulating whatever number he articulated?

13 A. I don't recall a precise analysis that he  
14 used to arrive at that number. The best of my  
15 recollection is that number would have to take into  
16 account a potential liability moving forward,  
17 interest rates, present value, mortality, morbidity,  
18 and my understanding is that those things were  
19 considered when he arrived at that number.

20 Q. So mortality, morbidity, discount rate,  
21 those were factors in the equation, in Mr. Hughes's  
22 equation that got him to a number that he  
23 articulated, is that right?

24 A. I can't speak specifically for him, because

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1 I don't know all the discussions that he would have  
2 had necessarily about discussing numbers with  
3 Spiegel. But my understanding is that those types of  
4 factors would have been discussed or considered in  
5 coming to any type of settlement offer, number,  
6 proposal or discussion.

11:51:52 7 Q. Okay. And, as far as you know, Mr. Hughes  
8 did not incorporate in the equation this  
9 extraordinary revelation which had, in your words, an  
10 extraordinary impact on the benefits going forward?

11:52:09 11 A. My recollection, and what I talked about  
12 earlier, was that he apologized to Attorney Spiegel  
13 at the onset of that meeting and that the numbers  
14 that he had in mind prepared to discuss with him were  
15 prior to the discovery of the reduction in the  
16 benefits in the coffee house just minutes before.

11:52:41 17 Q. Okay. So Mr. Hughes was willing to present  
18 a number to Mr. Spiegel that did not incorporate or  
19 measure this extraordinary revelation, is that right?

11:52:56 20 A. Can you say that question again, please?

11:52:57 21 Q. So, as far as you know, Mr. Hughes  
22 presented a number to Mr. Spiegel that did not factor  
23 in the extraordinary revelation that you and he had  
24 reached earlier that day?

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1 Mr. Hughes on which you're giving testimony that you  
2 have an understanding about how he arrived at the  
3 number?

11:54:46 4 A. Can you repeat the question, please?

11:55:02 5 MR. ROBERTS: Can you read that  
6 back.

11:55:02 7 THE COURT REPORTER: "What  
8 discussions did you have with Mr. Hughes on  
9 which you're giving testimony that you have an  
10 understanding about how he arrived at the  
11 number?"

11:55:02 12 A. My recollection is that the discussions  
13 that Mr. Hughes had with Attorney Spiegel included  
14 the things I talked about earlier, the mortality,  
15 morbidity, interest rates, benefit level, maximum  
16 benefit period, present value. I don't think there  
17 was an exact formula that you could punch in the  
18 numbers and come up with something.

11:55:31 19 Q. That wasn't my question. Are you  
20 testifying that you had no discussions whatsoever  
21 with Mr. Hughes about the manner in which he arrived  
22 at a number, and your testimony is based solely on  
23 what you observed in the dialogue between Hughes and  
24 Spiegel?

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11:53:11 1 MR. ELLIS: Objection.

11:53:15 2 A. To the best of my recollection, they had  
3 discussion on numbers and that it didn't -- the  
4 numbers that they ultimately discussed did not take  
5 into account that the benefit had been incorrectly  
6 paid to date.

11:53:33 7 Q. You mean you weren't seeking a  
8 reimbursement or you didn't factor in for future  
9 benefits that item?

11:53:44 10 A. My recollection is that the discussions  
11 were based on the benefit level, the incorrect  
12 benefit level, and that the appropriate benefit level  
13 that it should have been at that time.

11:53:56 14 Q. I didn't understand your answer to the  
15 question. Did you factor in the assertion that Mr.  
16 Kearney was required to reimburse the company for any  
17 benefits paid erroneously?

11:54:15 18 A. I can't recall if that was part of the  
19 consideration at that point in time. I know at some  
20 point in time a decision was made not to seek  
21 reimbursement. I don't know at that particular time  
22 whether or not that was something that was considered  
23 in the discussion of numbers that were had.

11:54:37 24 Q. What discussions did you have with

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11:55:51 1 A. I recall having discussions with Mr. Hughes  
2 about numbers and what would make -- calculating what  
3 a settlement number would look like.

11:56:08 4 Q. Is this prior to the meeting you had with  
5 Spiegel?

11:56:18 6 A. My recollection is that I did have a  
7 conversation with him prior or at some point after, I  
8 don't know a specific time line.

11:56:32 9 Q. Tell me what you can recall from that  
10 discussion.

11:56:56 11 A. I can't recall a specific conversation of  
12 what was said other than some of the factors that you  
13 would consider in coming up with an idea of a  
14 settlement is what the present value, mortality,  
15 things that I talked about earlier. I just don't  
16 remember the exact content and specifics of the  
17 conversation.

11:57:18 18 Q. Do you have a memory that he unambiguously  
19 communicated to you that the number had nothing to do  
20 with the Cuban coffee revelation?

11:57:30 21 A. My understanding is that those numbers that  
22 were initially discussed were based on the benefit  
23 level that was being paid at that point in time,  
24 which was, I believe, why Mr. Hughes had apologized

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1 at the onset of the meeting because those numbers  
2 weren't the numbers that we would be able to use  
3 going forward because the benefit needed to be  
4 reduced.

11 Q. That wasn't my question. My question was  
12 do you have a specific memory of the discussion with  
13 Mr. Hughes where he communicated to you that the  
14 number he intended to propose to Spiegel or had  
15 already proposed to Spiegel had not incorporated the  
16 Cuban coffee revelation?

17 A. To the best of my recollection, we had a  
18 conversation about numbers. The best I can recall  
19 the numbers that were discussed were in relation to  
20 what his -- Mr. Kearney's present benefit level was  
21 at.

22 Q. So it had nothing to do with the  
23 revelation?

24 A. That's my recollection, yes.

11 Q. And your recollection is based on  
12 Mr. Hughes telling you that?

13 A. I don't recall him necessarily telling me  
14 that or the conversations we may have had about that.  
15 I do remember him expressing that at the onset of the  
16 meeting with Attorney Spiegel.

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1 A. I wouldn't call it a coincidence. You  
2 know, Attorney Spiegel had asked us for a couple  
3 copies of the policy. It made me take a look at that  
4 policy and come to the understanding. My  
5 recollection was that he was aware of the  
6 circumstances with the case, that there were  
7 differences on both parties and that we were going to  
8 discuss those, and that one of the options when  
9 there's disputes is to come to some type of  
10 resolution and that those discussions would be had.

11 Q. You're mindful that DMS had a copy of the  
12 WJ567A policy for over four years prior to that  
13 meeting, right?

14 A. I don't recall a specific time that an  
15 actual copy of that policy was received by DMS.

16 Q. You're mindful that DMS performed some work  
17 for Jefferson-Pilot relative to the Kearney claim  
18 going back to 1997; you're mindful of that from your  
19 knowledge of the claim file, right?

20 A. I recall looking at that claim file there  
21 was a handling of the case by DMS prior to 2000.

22 Q. And you're mindful that in 1997 that at  
23 Todd Ditmar's specific request, because he wanted the  
24 legal department to review the policy, that the

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1 Q. So it's just coincidence that you and your  
2 supervisor planned a trip to Florida, bought tickets,  
3 got on a plane and went to meet with Mr. Kearney's  
4 counsel, and prior to actually arriving on ground in  
5 Miami, Florida you had no discussion, no inkling or  
6 no conclusion that he had been paid erroneously up  
7 until the time that you got on a plane to Florida.

8 A. That was a long --

9 Q. That was a bad question. Let me ask you  
10 that again.

11 Prior to getting on the plane to Florida  
12 and committing to that trip, did you have any  
13 discussion with anyone or had you thought to yourself  
14 that the benefits paid to Mr. Kearney were being paid  
15 in error?

16 A. I had no knowledge that the benefits being  
17 paid to Mr. Kearney were in error until sitting down  
18 in that coffee shop 15, 20 minutes or so before we  
19 met with Attorney Spiegel.

20 Q. So it's just a coincidence that two people  
21 would fly from Springfield, Massachusetts to Miami,  
22 Florida to talk to a lawyer for a claimant, and it's  
23 just coincidental that an extraordinary matter came  
24 to your attention after you arrived in Florida?

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1 WJ567A policy was sent to him by Howard Shelton,  
2 right?

3 MR. ELLIS: Objection.

4 A. I don't recall that specific communication  
5 document. If it's -- I'm sure it's in the file. If  
6 you want me to look at it, I'll verify that for you.

7 Q. As far as you're aware, did Jefferson-Pilot  
8 ever provide DMS with any documents or information  
9 that describe the benefits and the policies  
10 Jefferson-Pilot had outstanding with policyholders?

11 A. Can you repeat that question, please?

12 Q. As far as you're aware, did Jefferson-Pilot  
13 ever provide DMS with any documents or information  
14 that describe the benefits and the policies  
15 Jefferson-Pilot had outstanding with policyholders?

16 A. To my knowledge, recollection, they  
17 provided us with copies of their policies. I don't  
18 recall any other materials that they gave us.

19 Q. Copies of the policies were given  
20 independent of the actual claim files or were they  
21 just incorporated amongst the various claim files?

22 A. I don't remember the logistics, if they  
23 came in with each individual file or if they were  
24 sent all the policy forms and riders all at one time,

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1 suffered from severe clinical depression. Were you  
2 thinking that perhaps if you had him surveilled  
3 enough you could disprove those medical opinions?

02 42 54 4 A. Well, this surveillance, if you look at it  
5 in the full context in chronological order, this  
6 surveillance looks like it took place in March of  
7 2000. Now, I don't think the examinations took place  
8 until several months, if not a year, later.

02 43 11 9 As far as one's own doctor providing  
10 information, and that's -- well, obviously, we review  
11 that and understand it, but we would also need to try  
12 to confirm the information that any physician would  
13 provide to us.

02 43 29 14 Q. Okay, so you thought that Mr. Kearney was a  
15 fraud and his doctor was just covering for him and he  
16 really wasn't suffering from clinical severe  
17 depression and you were going to be able to disprove  
18 her opinion by having him surveilled several times?

02 43 43 19 A. No, not at all. I don't think I've ever  
20 felt that way about Mr. Kearney. In fact, I think  
21 what the surveillance did was confirm to his benefit  
22 a lot of the things that I recall he was putting down  
23 on the forms at that time about his limited abilities  
24 to work.

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02 43 56 1 Q. Then why did you have him surveilled  
2 repeatedly throughout 2000, 2001? There's at least  
3 six different surveillances of him throughout 2000,  
4 2001. If you kept finding information that supported  
5 what he was saying, why did you continue to decide to  
6 spend money to have him surveilled further and  
7 further?

02 44 18 8 A. I don't know all the specific dates that we  
9 did surveil him?

02 44 21 10 Q. We'll get to them. This tab for the report  
11 on 3/29/2000, we're done with the last page, which is  
12 the invoice. Turn back to the first page.

02 44 34 13 The first sentence or first section is  
14 "Additional Assignment." Why is there no note or  
15 letter or any reference in the claim file recording  
16 your additional assignment instruction to CS Claims  
17 Group?

02 44 55 18 A. The additional assignment is going to be  
19 memorialized at a later point in the file. It's  
20 going to be in the file, you just won't see it right  
21 then and there at this point in time.

02 45 08 22 Q. Why didn't you record that and preserve it  
23 in the claim file when you requested the additional  
24 assignment?

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02 45 14 1 A. Well, I wouldn't necessarily have to record  
2 it because it's going to be recorded later on in the  
3 claim file.

02 45 19 4 Q. As per your instructions, they don't detail  
5 what your instructions were. Why didn't you record  
6 and preserve in the claim file for Mr. Kearney's  
7 benefit, so he could understand what you were doing,  
8 what your instructions were?

02 45 37 9 A. Can you repeat the question?

02 45 37 10 Q. CS Claims Group says, without detailing  
11 what your instructions were, they say "As per your  
12 instructions."

02 45 40 13 Now, if you, when you retained CS Claims  
14 Group to perform this additional assignment, had  
15 preserved in the claim file what your instructions  
16 were, we'd be able to know what they were.

02 45 52 17 MR. ELLIS: Objection. Misstates  
18 the document.

02 45 54 19 MR. ROBERTS: Okay, fine.

02 45 54 20 Q. (By Mr. Roberts) Why did you not record to  
21 preserve in the claim file your request for  
22 additional assignment and the additional instructions  
23 you gave to CS Claims Group? Why didn't you do that?

02 45 54 24 A. My additional instructions would have been

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02 46 22 1 preserved in the claim file at a later point in time  
2 upon completion of the assignment by CS Claims.

02 46 22 3 Q. You record in the claim file the fact that  
4 Mr. Kearney returns a call and leaves a voice mail  
5 message, but you don't record in the claim file  
6 communications you have with surveillance folks  
7 giving them an additional assignment and  
8 communicating to them instructions, is that right?

02 46 39 9 A. That's correct.

02 46 39 10 MR. ELLIS: Objection.

02 46 40 11 Q. (By Mr. Roberts) You said that's correct?  
12 Mr. Ellis spoke over the top of you.

02 46 44 13 A. Yes, I did.

02 46 45 14 Q. Thank you.

02 46 47 15 A. Can I take a break soon?

02 46 49 16 MR. ROBERTS: Sure.

02 46 52 17 THE VIDEOGRAPHER: Going off the  
18 record at 2:46 p.m.

02 46 54 19 (A recess was taken)

02 51 28 20 THE VIDEOGRAPHER: Back on record at  
21 2:50 p.m.

02 51 31 22 Q. (By Mr. Roberts) Mr. Mills, could you turn  
23 to the next tab of Exhibit 44. It should be an April  
24 7, 2000 -- okay.

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just a second and then we'll flip back, but in Exhibit 43 there's a letter dated January 24, 2001, Bates labeled 3320 in that stack about 20 pages down. It's dated January 24, 2001. If you want to go back that way, it's in chronological order.

A. What's the date?

Q. January 24, 2001.

A. What's the Bates stamp?

MR. ELLIS: 3320.

Q. (By Mr. Roberts) It's a letter from you, if that helps. I think you might have it.

In the third paragraph you're talking about Dr. Judd -- or Dr. McClure's charge, right?

A. Correct.

Q. And you say that what she's requesting her reimbursement rate be is tantamount to extortion?

A. Yeah, I would say that that charge is excessive.

Q. And you say "tantamount to extortion"?

A. Exactly.

Q. What does extortion mean?

A. That she's asking for a price that's well beyond the customary charge for something of that nature.

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Q. How is that extortion? I asked you for your definition of extortion. Is that it?

A. Yes.

Q. When you first requested Mr. Kearney go see an IME, did he agree to do so?

A. My recollection is that he didn't necessarily want to go at the first point in time, no. I'd have to look at the file to confirm that.

Q. Turn to IME form 1901 in Exhibit 44. Do you mind putting those back in the order they came? Thank you.

A. Can you repeat the question again?

Q. It's a middle tab, it has IME form 1901.

This is a Disability Management Services medical resources referral form whereby you can request that someone with the experience to do so provide you with the right person to conduct an IME, right?

A. It is a medical resource referral form and it gives labels for what you want, an IME, expert record review.

Q. Was there something wrong about the way I phrased it?

A. I just want to confirm that I'm reading the same thing.

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Q. Was I correct?

A. Yes, you are.

Q. This is the form that you would complete if you're looking at a claim and responsible for a claim if you desire to have a doctor designated to perform an IME, right?

A. This appears to be the form that was used at that time, yes.

Q. Is this your handwriting?

A. Yes, that is my handwriting.

Q. Was this the first time you filled out a form for someone to go identify the appropriate expert for you to conduct an IME of Mr. Kearney?

A. Can you repeat the question?

Q. Was this the first time you prepared a form like this so that some expert could be identified to examine Mr. Kearney?

A. To my knowledge, this was the first time.

Q. And the following month Dr. Kenny and Couch were both designated, and within a month of that Mr. Kearney saw each of those doctors, right?

A. I believe he saw both those physicians around that time.

Q. Okay. So, it wasn't until January of 2001

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that you sought to have Mr. Kearney examined by an independent medical expert, right?

A. Correct.

Q. In October of 2000, months before you even first requested an IME, you started paying him benefits under reservation of rights, correct?

A. I don't recall when that began. I mean, I'd have to take a look at the file.

Q. It would be reflected in the file, is that your testimony?

A. To my understanding.

Q. Are you mindful of an October 2, 2000 letter that your supervisor sent to Mr. Kearney?

A. I remember something along this line.

Q. What's the Bates number of that letter?

A. 3055.

Q. It's a three-page letter. Are there three Bates numbers associated with those?

A. Oh, yes. 3053, 3054, 3055.

Q. Does this letter express to Mr. Kearney that the benefit he's receiving as of that time would be subject to a reservation of rights? I think it's the third page.

A. It says here that "While we await the above

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materials, the company's agreed to issue an additional benefit payment in the interest of good will. Under the circumstances, this payment is necessarily issued with the full reservation of rights."

Q. Does that mean he's getting the payment under a reservation of rights?

A. Correct.

Q. What does a reservation of rights mean?

A. Reservation of rights is something where there is some questions on a case but we're continuing to make the payment to an insured while we continue to gather all the information to make a benefit assessment.

Q. Okay, up to this point in time had you read the policy?

A. I would believe that I read the policy to some degree at that point in time.

Q. Okay. You put him on reservation of rights without a certainty that you had a full understanding of his rights under the policy?

A. It's more of the company reserving its rights under the policy as they're continuing to gather information. They don't want to -- while they

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still have questions about their claim and they're investigating it, they don't want to necessarily discontinue benefits to an insured, because we understand that can be harmful. So they're continuing to investigate, need more information, and in doing so they're not going to stop the payments, they continue to make the payments, but reserve the rights under the policy.

Q. That wasn't my question. My question was, you began to pay benefits to Mr. Kearney under reservation of rights before you read his policy?

A. Again, not knowing to the full scope of when I read and what I read on the policy --

Q. Would it be good faith for the company to begin, to begin, after someone's been receiving benefits for seven years, to begin paying them under reservation of rights without the courtesy of even reading the policy?

MR. ELLIS: Objection.

A. I don't understand the concern because the insured's getting the benefits. The company's just reserving its rights under the policy, whether they've looked at every single page of that policy or portions of the policy, there's questions about it.

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Q. Okay. And is it appropriate in good faith for an insurance company to begin paying benefits under reservation of rights without even conducting an IME, or even asking for an IME?

MR. ELLIS: Same objection.

A. Every case and the circumstances are different, you know --

Q. Is it good faith --

MR. FORMUS: Give him a chance to answer. He was in the middle of a sentence.

MR. ROBERTS: I'm sorry, I thought he was finished.

MR. FORMUS: The witness is trying to finish an answer. You stopped him in midstream.

Q. (By Mr. Roberts) Go ahead, finish your answer.

A. Can you repeat the question again, please?

Q. Do you have anything else to say?

A. I lost my train of thought when you guys started talking.

Q. I'll strike the question. Is it good faith for an insurance company to begin to pay somebody on reservation of rights when multiple surveillance of

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the individual is consistent with what he reports to the company, you haven't asked him to undergo an IME, and you're not even certain whether you read the policy? Is it good faith?

MR. ELLIS: Objection.

A. You asked a long question and I'm trying to understand that correctly. I think it's good faith to continue to give every benefit of the doubt to the insured, to continue to pay him every month as you continue to address questions and gather information about the case.

Q. You're giving the insured every benefit of the doubt as to entitlement of benefits when you surveil him repeatedly, and every time you surveil him it's consistent with what he says, you don't ask that he go see an IME, and you're not even sure you even read the policy. You're giving him every benefit of the doubt by then putting him under reservation of rights?

MR. ELLIS: Objection. That's a speech, not a question.

A. Again, you got to look at the full context of the case of the situation. There's other questions about the case and we continued to pay him.

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Q. Very well. That October 2, 2000 letter putting Mr. Kearney's payments under reservation of rights was authorized by Bill Hughes. Had he reviewed the file before he sent that letter?

A. Could I see that letter again?

Q. Sure. Tell me if I'm reading the first paragraph. I'm going to mark as Exhibit 45 four letters, one dated October 2, 2000 from Mr. Hughes to Chris Kearney; a responsive letter of Mr. Kearney dated October 25, 2000 to Mr. Hughes; a letter dated October 19, 2000 from Mr. Spiegel to Mr. Hughes with a fax cover sheet; and a letter from Mr. Spiegel -- excuse me, to Mr. Spiegel from Mr. Hughes. The Bates numbers of these documents are 3053 through 3055, 3047 and 48, 3136 and 37, 0630, 3154 and 3155.

Does Mr. Hughes lie?

MR. ELLIS: Do you have a copy of those?

MR. ROBERTS: I do, but I can't put my hands on it immediately. We'll do it at the next break.

A. I don't know. You'd have to ask him.

Q. If he says that he's reviewed a policy, do you trust that he's telling the truth?

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correctly?

A. Yes, I did.

Q. Is he an honest guy?

A. Like I said, I think he's a credible, honest guy.

Q. Does he understand disability insurance policies and can he read unambiguous language without misinterpreting it?

A. He's an intelligent guy, I'm sure he can read policies.

Q. Can he read unambiguous language and understand what the unambiguous language says?

A. You'd have to talk to him about that, about his ability to read.

Q. What's your assessment?

A. I understand him to be a pretty knowledgeable guy.

Q. "The following is a summary of that review and an outline of the documentation and information we'll need in order to determine further benefit eligibility."

So he was concerned about what level of benefit eligibility Mr. Kearney had going into the future and he wrote this three-page letter concerning

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A. You'd have to talk to him about what he does or doesn't do.

Q. All right. But what's your assessment of his credibility?

MR. ELLIS: Objection.

A. I think he's a pretty credible guy.

Q. Have you ever known him to lie?

A. Not to my knowledge.

Q. Have you ever known him to misrepresent anything to a policyholder?

A. Not to my knowledge.

Q. Mr. Hughes says in the first paragraph, "Dear Mr. Kearney --

MR. ELLIS: Excuse me, which letter are we on?

MR. ROBERTS: October 2 of 2000.

Q. (By Mr. Roberts) He says, "Dear Mr. Kearney, I've been asked to assist in the evaluation of your claim of ongoing disability benefits." Was that true, was he asked to assist?

A. I don't recall.

Q. Continuing, "Accordingly, to have a full understanding of your situation, I have reviewed your policy and your claim file." Did I read that

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that, right?

MR. ELLIS: Objection. Unless you give him the context of the letter, I object.

MR. ROBERTS: "Objection" would have been perfectly adequate for you.

A. Again, you'd have to ask him about that.

Q. The context of the letter, what your lawyer said? But he's an honest guy. If he says he did something, he did it?

A. He's an honest guy.

Q. And he can read unambiguous language without screwing it up?

A. He can read. You know, you'd have to talk to him about those things.

Q. Let's go to the November 2, 2000 letter to Mr. Kearney, 3043.

MR. ELLIS: Is that in 43 again?

MR. ROBERTS: 43.

MR. ELLIS: What's the Bates on it, please?

MR. ROBERTS: 3043.

Q. This is from you to Mr. Kearney, correct?

A. November 2 letter, 2000, addressed to Christopher Kearney in care of Ms. Mary Kearney.

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03 42 06 1 Q. From you?

03 42 07 2 A. From me.

03 42 08 3 Q. So I was correct?

03 42 10 4 A. You are now correct.

03 42 11 5 Q. Okay. The last sentence of the third

6 paragraph says, "At this time, it appears that

7 without the requested claim materials we would be

8 unable to evaluate your eligibility for additional

9 benefits," right?

03 42 24 10 A. I'm sorry, the third paragraph?

03 42 25 11 Q. End of the third paragraph, last sentence.

03 42 27 12 A. Mm-hmm.

03 42 27 13 Q. "At this time, it appears that without the

14 requested claim materials we would be unable to

15 evaluate your eligibility for additional benefits."

16 Did I read that correctly?

03 42 35 17 A. Yes, you did.

03 42 36 18 Q. So you're threatening to cut him off if he

19 doesn't give you the information you demand, right?

03 42 41 20 A. No, it's not threatening, it's just

21 explaining to him that we need additional information

22 to review the claim.

03 42 48 23 Q. Is it extortion?

03 42 51 24 A. No, I wouldn't say it's extortion.

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03 42 53 1 Q. I'm sorry, what was your --

03 42 55 2 A. It's confirmation to evaluate a claim.

03 42 59 3 Q. You're saying "I'm not going to pay you

4 money unless you do this for me." Is that not

5 extortion under your definition?

03 43 05 6 MR. ELLIS: Objection.

03 43 06 7 A. No.

03 43 06 8 Q. Okay. Can you turn to 3038, December 5,

9 2000 letter?

03 43 29 10 MR. ELLIS: Bates number, please?

03 43 31 11 MR. ROBERTS: 3038.

03 43 36 12 Q. (By Mr. Roberts) Third paragraph you say,

13 "In a further effort to allow you sufficient time to

14 submit the requested materials, Jefferson-Pilot has

15 authorized an additional benefit check."

03 43 48 16 You never talked to Jefferson-Pilot about

17 authorizing an additional benefit check at any time,

18 did you?

03 43 58 19 A. I think initially I would have talked to

20 them about the benefits because I don't think we had

21 access to be able to issue a payment.

03 44 03 22 Q. For the December 2000 payment, it's your

23 testimony that you had a communication with

24 Jefferson-Pilot about, "Hey, we want some more

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1 information from Kearney, but he hasn't given it to

2 us yet. Will you authorize me to make a payment?"

3 Did that happen?

03 44 24 4 A. This would have been a situation where I

5 would have spoken with Bill about that. Now, whether

6 or not -- you know, who he spoke with, he had given

7 me an authorization to go ahead and make a payment.

03 44 33 8 Q. So your testimony under oath is that you're

9 telling the truth. Jefferson-Pilot at some time in

10 the November/December 2000 time frame was contacted

11 by someone at your office, the situation was

12 explained to Jefferson-Pilot, and someone at DMS

13 sought the affirmative authorization of

14 Jefferson-Pilot to issue another benefit payment to

15 Mr. Kearney, is that your testimony, sir?

03 44 58 16 A. Can you repeat the question, please?

03 45 01 17 Q. Is it your testimony that in November of

18 2000 or December of 2000, there was a conversation

19 with Jefferson-Pilot, or communication with them in

20 some fashion, whereby DMS sought Jefferson-Pilot's

21 authority to issue an additional benefit check to Mr.

22 Kearney for December of 2000?

03 45 25 23 A. I don't recall necessarily being the one

24 that would have had any type of communication with

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1 them. I don't know if others would have had at that

2 point in time. But the authorization was given,

3 whether it was through an individual at

4 Jefferson-Pilot or people that were my superiors to

5 go ahead and issue a payment.

03 45 45 6 Q. There's nothing in the claim file that says

7 there was any contact with Jefferson-Pilot other than

8 contact with a guy named Swink to get Darryl Norris's

9 address. Where is this supposed authority reflected

10 anywhere?

03 46 05 11 A. I don't know exactly where it would be in

12 there to suggest that. I know I had conversations

13 routinely with Bill, Bill Hughes.

03 46 14 14 Q. You were never in Bill Hughes's vicinity

15 when he had any communication with Jefferson-Pilot to

16 obtain such authority, did you?

03 46 22 17 A. As far as this, no, I don't recall.

03 46 25 18 Q. Mr. Mills, that sentence is not true.

19 Nobody sought Jefferson-Pilot's authority for an

20 additional benefit check, right?

03 46 35 21 MR. ELLIS: I will object to

22 Counsel's statement on the record.

03 46 40 23 Q. (By Mr. Roberts) Is it true? Is that

24 sentence true?

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03:46:43 1 A. I don't know. I really don't.  
 03:46:48 2 Q. The last sentence of that paragraph,  
 3 "Unfortunately, if the requested items are not  
 4 received within the next 30 days we will be unable to  
 5 evaluate your eligibility for further benefits." Is  
 6 that extortion?  
 03:46:59 7 A. No, that's not extortion. That's just  
 8 saying that we were unable to evaluate the claim.  
 03:47:08 9 Q. In every letter where you refer to  
 10 receiving the authority of Jefferson-Pilot to do  
 11 something or not do something, were you telling the  
 12 truth?  
 03:47:18 13 A. I recall that in all these letters I had  
 14 and I always have told the truth. Whether or not it  
 15 was direct contact with myself or someone at  
 16 Jefferson-Pilot or through any superiors, or that I  
 17 understood it came from Jefferson-Pilot, or through  
 18 them themselves, so I don't think there's any lies  
 19 here.  
 03:47:39 20 Q. How many conversations can you recall you  
 21 having with Jefferson-Pilot in 2000 and 2001 where  
 22 you asked them for authority to do something on Mr.  
 23 Kearney's claim?  
 03:47:49 24 A. I don't recall. I mean, that is several

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1 years ago. I had a number of cases. Several phone  
 2 calls, you know, for business and other reasons. I  
 3 don't recall.  
 03:48:03 4 Q. Did you seek their authority to hire  
 5 investigators?  
 03:48:08 6 A. No, I wouldn't do that.  
 03:48:10 7 Q. That was \$12,000 every two months. Mr.  
 8 Kearney's benefit was only 3,000.  
 03:48:15 9 MR. ELLIS: Objection.  
 10 Argumentative.  
 03:48:18 11 Q. (By Mr. Roberts) Right?  
 03:48:18 12 A. I think that's what the total amount was.  
 03:48:21 13 Q. The very first page of Exhibit 33, you're  
 14 directing Jefferson-Pilot to issue payment. Why then  
 15 would you be asking them for their authority to make  
 16 a payment later?  
 03:48:34 17 A. Was that the first one?  
 03:48:37 18 Q. Yes, sir. Do you want to see it? What  
 19 does it say?  
 03:48:46 20 A. This Bates 3128 is when we first got the  
 21 files, and I understand that we did not have the  
 22 ability just yet to issue the payments ourselves.  
 23 But if you take into context going forward to the  
 24 time you're now questioning, I think what the

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1 questions and issues that we have on the case, there  
 2 was a point of authorization I would need to go to in  
 3 order to continue to pay the case.  
 03:49:15 4 Q. Where is it documented in the claim file?  
 03:49:17 5 MR. ELLIS: I'm going to object  
 6 unless you give him the claims file. Don't  
 7 make faces, Mike.  
 03:49:23 8 MR. ROBERTS: I'm not making faces,  
 9 Bill.  
 03:49:29 10 A. I don't recall them. I can look at some  
 11 documents for you.  
 03:49:36 12 Q. Let's turn to --  
 03:49:37 13 MR. ELLIS: Let's go off the record  
 14 for one second here.  
 03:49:43 15 MR. ROBERTS: I have five more  
 16 minutes. Let's go back on the record and not  
 17 waste time.  
 03:50:08 18 Q. (By Mr. Roberts) Turn to Bates number  
 19 3310, which is another 20 or 30 pages down the way.  
 20 Turn to the next page. This is the transcript of  
 21 your phone conversation with Mr. Kearney.  
 03:50:26 22 Now, you say you reviewed only portions of  
 23 it the other day. The portions of it that you  
 24 reviewed, were they accurate, as far as you know?

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03:50:34 1 A. I just saw the first couple pages of this.  
 2 I don't recall the conversation particularly. I  
 3 don't necessarily disagree that they're not my words  
 4 or Mr. Kearney's words. I don't recall the  
 5 conversation.  
 03:51:01 6 Q. Can you turn, sir --  
 03:51:05 7 MR. ELLIS: Again, I object to the  
 8 use of privately --  
 03:51:10 9 MR. ROBERTS: Good.  
 03:51:10 10 MR. ELLIS: -- recorded information  
 11 without the consent of the party being  
 12 recorded.  
 03:51:16 13 MR. ROBERTS: It's not illegal.  
 03:51:19 14 MR. ELLIS: I didn't know you were  
 15 the judge.  
 03:51:24 16 Q. (By Mr. Roberts) At the top of the fourth  
 17 page, the first reference is you, then Kearney, then  
 18 you, then Kearney, and the second Kearney reference  
 19 is what I'm going to read.  
 03:51:42 20 Did he tell you that he's going to go to  
 21 the appointment, being the IME, "but I need this  
 22 check to live on"? Do you recall him making  
 23 statements to you that he needed his monthly checks  
 24 to live on?

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A. I don't recall that particular statement at that time.

Q. Then tell me if I'm reading this correctly. "Do you understand that" -- this is Kearney continuing to talk -- "I have expenses to pay. I haven't been working very much and all, and it's due to all this (pause) all this shit I'm going through."

Your response was, "Um-hum, um-hum."

"Kearney: And umm, I'm not afraid of being examined by a doctor."

Your response is, "Oh, it's not -- it has nothing" -- and he interrupts, "I" -- and then you continue, "I know, I hear that. It's not about being afraid of going to an examination. I mean, I" -- and then Kearney says, "Why don't you just send me the other release form and I'll sign them. Your new form is so broad and you haven't" -- then you say "That's -- that's their form. That's Jefferson-Pilot's form that every one of their insureds is, to my knowledge, completing right now."

Were you telling the truth when you told him it was Jefferson-Pilot's form?

A. Again, I think I just said earlier I don't recall the content of this conversation and the

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context in which it was had as well. I can't really speak towards this because I just don't remember.

Q. If this transcript reflects on multiple occasions that in direct questioning by Mr. Kearney you tell him that the continuance of disability form and the authorization form you're asking him to sign were not DMS's forms but were Jefferson-Pilot's forms, if that's the case, would you have been telling him the truth?

MR. ELLIS: Objection.

A. Again, I don't feel comfortable with that or able to respond to that because I don't know the circumstances of what was going on at this point in time.

Q. Okay. Is it true that the forms being sent to Mr. Kearney were Jefferson-Pilot's forms and not DMS's forms?

Forget about the conversation. Forget about the transcript, put it away. Is it true that the forms being sent to him were not DMS's forms but were rather Jefferson-Pilot's forms?

MR. ELLIS: Objection.

A. They were Jefferson-Pilot forms that we produced from our claimant system at that point in

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time that were different than the ones I think were used in the past.

Q. How did they become Jefferson-Pilot's forms? They were your forms before you were doing the Jefferson-Pilot business, and then when you took on Jefferson-Pilot's business you continued using your forms?

MR. ELLIS: Objection. Argumentative.

Q. (By Mr. Roberts) Right?

A. It's the continuance of disability authorization forms that were produced from our claimant system on behalf of Jefferson-Pilot. Whether it's their form, our form, I don't know what the correct characterization should be for that.

Q. But you know that it was important to Mr. Kearney, whether it was material or not, it was important to him that they be Jefferson-Pilot's forms as opposed to yours, and you told him that they are Jefferson-Pilot's forms and that wasn't true, was it, sir?

MR. ELLIS: Objection. Misstates the testimony, misstates the transcript.

A. Again, I don't recall that conversation or

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what was said to him at that time. I believe Mr. Kearney was well aware that Disability Management Services was taking over the administration of his claim, so I wouldn't imagine that he would have expected anything other than receive claim forms from our office.

MR. ROBERTS: I have no further questions at this time. We'll continue in progress.

MR. ELLIS: Give us one minute here.

THE VIDEOGRAPHER: Going off record at 3:54 p.m.

(A recess was taken)

MR. ELLIS: Okay, let's go back on the record for just a moment, please.

THE VIDEOGRAPHER: Back on record at 3:57 p.m.

CROSS EXAMINATION BY MR. ELLIS:

Q. Just one question. Since Counsel was quoting to you from at least a small portion of a recorded transcript, I'm going to ask you to read the transcript to yourself, just above and below the part he's talking about, and ask you if that explains

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